

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

July 19, 2011

In the Matter of N. M. WORMNEST, Minor.

No. 301515
Macomb Circuit Court
Family Division
LC No. 2009-000263-NA

In the Matter of YOUNGBLOOD/WORMNEST,
Minors.

No. 301880
Macomb Circuit Court
Family Division
LC No. 2009-000261-NA
LC No. 2009-000262-NA
LC No. 2009-000263-NA

Before: BORRELLO, P.J., and METER and SHAPIRO, JJ.

PER CURIAM.

In these consolidated appeals, respondent father appeals by right the trial court order terminating his parental rights to his minor child under MCL 712A.19b(3)(c)(i), (g), and (j), and respondent mother appeals by right the same order terminating her parental rights to her three children under MCL 712A.19b(3)(c)(i), (g), and (j). For the reasons set forth in this opinion, we affirm the termination of parental rights of both parents.

I. FATHER

When the children were removed from the mother's home and the initial petition was filed in this matter, respondent father's whereabouts were unknown. When he came forward three months later, he was given a parent/agency agreement. At the time he made initial contact with the Department of Human Services, (DHS), the father was living in a three quarter house and was on probation for a domestic violence conviction. Through his domestic violence conviction, the father was receiving some counseling services. However, numerous times throughout these proceedings, he refused to provide an address to DHS, the Court, or his attorney. His explanation was that certain individuals with whom he was living did not want their address on the record. He also demonstrated a lax attitude toward the importance of attending appointments and engaging in services that were offered to him. For example, it took three appointments for him to attend and complete his court ordered psychological evaluation.

Additionally, he refused to take the medication that the doctor prescribed. Although referred three times, he did not attend substance abuse classes. His hair follicle test and his drug screens were negative, but he missed several tests and they were deemed positive.

Despite the fact that the father attended parenting classes, the record demonstrates that his parenting skills did not improve. His failure to improve was primarily based on his refusal to follow instructions to not overindulge his child or talk about issues regarding the case. He refused to acknowledge problems with anger management, alcohol, or drugs and was thus denied some services. He refused to admit the physical abuse of one of respondent mother's sons or being involved in any domestic violence, and he remained in denial about or blamed others for all of his problems. Despite having no physical or mental disabilities, respondent father worked only about ten hours per week for minimum wage throughout these proceedings, barely enough to cover his minimal rent. His excuse for not working more hours was that he needed to attend the required services. However, he attended services only sporadically and did not demonstrate any benefit from them. He had not provided any financial support for his child in the past and did not do so during these proceedings. In addition, he did not complete domestic violence services because he was asked to pay for the remainder of the classes. His plan for reunification was to return to the same situation from which the children had been removed.

II. MOTHER

The mother of the minor children had previously gone through several years of DHS involvement, including numerous in-home services, before these proceedings began. The children were removed from her care because of health and safety issues in the home, neglect and failure to protect, mental health issues, domestic violence, and respondent mother's abuse of prescribed pain medication, which impaired her ability to function. She had been involved in counseling before the removal, and she continued in counseling throughout the proceedings. However, little progress had been made on any of the issues. She complied with the psychological evaluation but participated only sporadically in the required services and did not demonstrate any benefit from the services she attended.

DHS provided a housekeeper for respondent mother's home because she could not "do for herself." Respondent mother was a hoarder, and her entire home was filled with boxes piled on top of each other, creating very unsanitary and unsafe conditions, (including the presence of cat feces throughout the home), which she was unable to correct. Her plan for reunification was that her child with respondent father would be with her, Community Mental Health would come in and care for him as they did when he was a preschooler, and Adult Services would do household maintenance. She had also told the child that his father would be there. This was the same situation, including all the in-home services, from which the children had been removed. The children had made great progress since their removal, which demonstrated the severe neglect that they had suffered while in respondent mother's care. Respondent mother, however, had gained no understanding of why her children were removed or how to be a better parent.

III. ANALYSIS

This Court reviews the trial court's findings under the clearly erroneous standard. MCR 3.977(K); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520, reh den 460 Mich 1205 (1999); *In re Gazella*, 264 Mich App 668, 672; 692 NW2d 708 (2005). A finding of fact is clearly erroneous

if the reviewing court is left with a definite and firm conviction that a mistake was made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003), reh den 468 Mich 1239 (2003). Further, regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appear before it. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

We begin our analysis by determining whether the trial court clearly erred in finding clear and convincing evidence supporting the statutory grounds for termination of both respondents' parental rights. MCR 3.977(K); *Sours*, 459 Mich at 633; *Gazella*, 264 Mich App at 672.

Respondents' parental rights were terminated under MCL 712A.19b(3)(c)(i), (g), and (j), which provide:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

When the children were removed, respondent father's whereabouts were unknown. He had not provided support for the minor child. He told caseworker Strunk that he was attending individual counseling for substance abuse, which turned out to be group counseling twice a month. He was diagnosed with severe substance abuse problems and was referred three times for treatment, but he did not attend substance abuse classes. On the positive side, his hair follicle test and his drug screens were negative. However, he missed several tests and they were deemed positive. Although he attended parenting classes, his parenting skills did not improve. Instead of listening to the workers, he stated that he had improved and that the contrary belief of DHS workers was their "opinion." In addition, he refused to follow instructions to not talk to the

children about issues regarding the case. He refused to acknowledge problems with anger management, alcohol, or drugs and thus was denied some services requiring the client to acknowledge there was a problem. Though there was ample testimony to suggest that respondent father had physically abused another of respondent's minor children, he remained in denial about or blamed others for all of his problems, including subjecting a minor child to physical abuse.

Throughout this case, respondent father worked only about ten hours per week for minimum wage, barely enough to cover his minimal rent. His excuse for not working more hours was that he needed to attend the required services. However, he attended services only sporadically, and did not demonstrate any benefit from them. In addition, he did not complete domestic violence services because he was asked to pay for the remainder of the classes. The record reveals that respondent father was never in a position to take proper care and custody of the minor child, due to numerous reasons. First, he did not have sufficient income or a proper home. Second, he demonstrated throughout the pendency of these proceedings that he was not capable of working more than ten hours a week and also attend the services that were provided toward reunification. Third, "his plan" was to move in with respondent mother and live off SSI money, which both she and another minor child received, coupled with collecting and using state offered services. This had been his plan prior to DHS involvement and the record established that plan had proved very harmful to the children. Coupled with his plan of returning to the status quo which led to unacceptable results was the fact that respondent father had no comprehension of the severe problems that affected another minor within the household. Respondent father had no idea how to effectively deal with or even understand how to parent such a child. Hence, the conditions that led to the adjudication continued to exist at the termination hearing. Based on respondent father's refusal to acknowledge any problems or to cooperate with services and his failure to benefit from the services provided, there was clear and convincing evidence to support a conclusion that the conditions would not be rectified within a reasonable time. MCL 712A.19b(3)(c)(i). Without regard to his intent, it was clear that respondent father had failed to provide proper care or custody for his child and there was no reasonable expectation that he would be able to do so within a reasonable time. MCL 712A.19b(3)(g). Finally, there was clear and convincing evidence to support the court's finding that there was a reasonable likelihood, based on respondent-father's conduct and capacity, and his plan to go back to the conditions that led to the removal, that the child would be harmed if returned to him. MCL 712A.19b(3)(j).

Respondent mother contends that she did everything asked of her under the parent/agency agreement. The facts presented at the several hearings in this matter contradict this contention. The record clearly demonstrated that respondent mother did not benefit from services and was incapable of caring for herself, let alone any of her children. Moreover, "a parent must benefit from the services offered so that he or she can improve parenting skills to the point where the children would no longer be at risk in the parent's custody." *In re Gazella*, 264 Mich App at 676. Regarding her argument that the trial court erred in allowing the caseworker to testify as an expert in all areas under the guise of offering testimony of experts through their written reports, the reports were entered into the record without objection. Additionally, we note that the caseworker, Sheila Strunk, was twice ordered by the court to inspect respondent mother's new home and failed to do so. However, the court made a determination that based on the caseworker's failure to comply, the court would consider the home suitable. Thus, respondent

mother did not suffer any adverse legal consequences by the failure of Strunk to comply with the court's order.

The record in this matter demonstrates a continuing pattern of neglect and abuse on the part of respondent mother. The children were removed from respondent mother following several years of DHS involvement beginning in 1998. She had numerous in-home services because of health and safety issues in the home, which included failure to protect her children, neglect of her children, mental health issues, domestic violence, and abuse of pain medications that impaired her ability to function. She had been involved in counseling before the removal, and she continued in counseling throughout this case to deal with depression, controlling impulses, resolving anger, and finding housing. Despite years of intervention, the record reveals that little progress had been made. Respondent mother also had continuing in-home involvement by SASS. She complied with the psychological evaluation but participated only sporadically in the required services. Due to respondent mother's dependency on pain medications, when alternative pain management programs were offered to her, she refused. Throughout the proceedings, she was often in a prescription drug induced stupor, to the extent that she could barely stumble to the visitation room and spent most of her visitation time on the couch with little communication with the children. Her prescription drug-induced haze was noticeable at the termination hearing, and she had begun to have problems with her short-term memory.

Respondent mother went back and forth about giving up her rights to some of her minor children. Her mental health problems created very unsanitary and unsafe conditions for her minor children. DHS provided a housekeeper to the home because respondent mother could not "do for herself." Her plan, stated at the termination hearing, was essentially the same plan that led to DHS intervention. Compounding the mental health, substance abuse and physical issues suffered by respondent mother was that at the time of their removal, the children were all thought to have special needs. However, by the time of the termination hearing, one of her children was no longer considered emotionally impaired and no longer in special education. In addition, that child made it very clear that they did not want to be reunited with their mother but desired to remain in their foster home. All of the other children had demonstrated significant strides toward better physical and mental health following removal from their mother. We can only conclude that the progress made by all of the children demonstrated the severe neglect that they suffered while in respondent mother's care.

Respondent mother did not demonstrate any benefit from the services she attended and gained no understanding of why her children were removed or how to be a better parent. She continued her dependency on high doses of pain medication, which left her in a stupor, unable to communicate with her children, clean her home, or care for herself.

There was clear and convincing evidence to support a finding that the conditions which led to the adjudication continued to exist and there was no reasonable expectation that they would be rectified within a reasonable time. MCL 712A.19b(3)(c)(i). Although the court did not question respondent mother's love for her children, there was clear and convincing evidence to support a finding that, without regard to intent, respondent mother had failed to provide proper care and custody for her children and there was no reasonable expectation that she would be able to do so within a reasonable time. MCL 712A.19b(3)(g). Finally, there was clear and convincing evidence to support a finding of a reasonable likelihood, based on her conduct and

capacity, that the children would be at serious risk of harm if returned to respondent's home. MCL 712A.19b(3)(j).

Finally, the trial court did not clearly err in finding that termination of respondents' parental rights was in the best interests of the children. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-367; 612 NW2d 407 (2000). Despite the numerous services and help provided to respondents, neither parent created a home situation suitable for the return of the children. The record indicates that neither was capable of creating a suitable home for their children. As previously stated, one of the children made clear they did not want to return to the custody of their mother. While the children had clearly suffered while living with their parents, the record also reveals that they all made significant improvements once they were removed from that home.

Affirmed.

/s/ Stephen L. Borrello
/s/ Patrick M. Meter
/s/ Douglas B. Shapiro